

APPENDIX G: TERMS AND CONDITIONS OF SPECIAL USE PERMIT FOR GRAZING

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OCTOBER 21, 1995

In addition to the standard terms and conditions of a National Park Service (NPS) Special Use Permit, the following conditions apply to grazing:

1. The terms and conditions specified in the lease or permit issued by the Bureau of Land Management, that governed grazing on the allotment on October 30, 1994 are the terms and conditions of this permit, except as such terms and conditions may be modified herein.
2. For purposes of this permit, any reference to the "Authorized Officer" in the terms and conditions of the permit existing on October 30, 1994 shall mean the Superintendent, Mojave National Preserve, and any reference to the "Bureau," or "Bureau of Land Management" shall mean the "National Park Service."
3. The permit shall operate under the general guidance of the Allotment Management Plan (AMP) in effect on October 30, 1994 as amended by the Bureau of Land Management in a Grazing Decision of June 10, 1994 in compliance with the U.S. Fish and Wildlife Service biological opinions on desert tortoise and their habitat. From time to time, it may be necessary to make modifications to the Allotment Management Plan as new information is available regarding livestock carrying capacity, analysis of monitoring data, status of range improvements, and general grazing capacity. Modifications to the Allotment Management Plans will be made in consultation, cooperation and coordination with the permittee(s) wherever possible. The Superintendent retains the authority to approve to such modifications.
4. All or a portion of the permit can be temporarily suspended due to drought, fire, flood, or other natural or man-made catastrophe, or to facilitate installation, maintenance or modification of range improvements. When monitoring shows grazing use is causing an unacceptable pattern of use or use exceeds carrying capacity or use is not in conformance with prescribed goals and objectives as outlined in the Allotment Management Plan, or the biological opinions of the U.S. Fish and Wildlife Service, or the legislative directions, regulations and policies of the National Park Service, the Superintendent shall modify grazing use. In making modifications the Superintendent will follow the terms and conditions, both above and below, notably number three above. When grazing has been temporarily reduced, the unused portion of the permit shall be set aside until the NPS determines full grazing use can resume.
5. The Superintendent may modify existing terms or add additional terms and conditions to this permit, as needed. Before making such modifications, the Authorized Officer will consult with and provide opportunity for comment from the permittee concerning modifying the existing terms or prescribing any added terms. The Authorized Officer will notify the permittee of the modification or addition of terms and conditions sixty (60) calendar days prior to adoption of the new or modified term or condition.
6. This permit to graze is attached to the base property identified as such in the AMP and permit in effect on October 30, 1994. For the purposes of this permit, "base property," means the same as the term is defined in 43 CFR 4100.0-5.

7. Under section 510 of the California Desert Protection Act, the permittee may convey to the United States the base property to which this grazing preference is attached. The grazing preference provided by this permit will be terminated upon conveyance of the base property to the United States.
8. If the permittee disposes of base property to which this grazing preference is attached, by sale, gift, will, or otherwise, to a party other than the United States, the acquiring party must apply for a new permit within ninety days IF that party intends to continue grazing under the permit. If the acquiring party intends to continue grazing, then such an applicant must be engaged in the livestock business, must own or control (by contract) the base property and cattle and must submit a legal description and record of ownership or control of the base property. The acquiring party shall accept the terms and conditions of the permit with such modifications as the applicant may request which are approved by the authorized officer. Any other terms and conditions that may be needed will be worked according to the provisions in number three above. An applicant who is not otherwise qualified and who has gained this permit by testamentary disposition must meet the qualifications herein within two years of gaining the base property.
9. Should a third party acquire the base property to which this grazing preference is attached, that party may elect to discontinue grazing, and the Authorized Officer will then cancel such grazing preference and not reissue it.
10. The permittee may dispose of this grazing preference to a third party and retain title and/or control of the base property to which the grazing preference is attached. The acquiring party may use the grazing preference only if so qualified under condition #9 above. The NPS will not issue a new grazing preference to the permittee who retains the base property but disposes of the existing preference that attached to that base property under this permit.
11. The Authorized Officer may approve the transfer of this permit from one base property owned or controlled by the permittee to another base property owned or controlled by the same permittee.
12. A permittee may apply for, and the Authorized Officer may grant, conservation use of the permit during which period the permittee will refrain from exercising the privilege of grazing under this permit.
13. Range improvements shall be installed, used, maintained, and/or modified or removed from National Park System lands in manner consistent with grazing management practices and the goals and objectives of the Allotment Management Plan. Prior to installing and/or modifying range improvements on National Park System lands, permittees will submit a request to, and obtain the consent of, the Authorized Officer. The Authorized officer, after compliance with the National Environmental Policy Act and other-applicable statutes, will notify a permittee of a decision on a request to install or modify a range improvement via letter. Upon the Authorized officer's approval of the range improvement, the permittee and the NPS will enter into an agreement describing construction and maintenance responsibilities for the approved project. Any range improvement, or portion thereof, owned by permittee before October 31, 1994 remains the property of the permittee. Any range improvements constructed on Federal lands under this permit will belong to the United States, EXCEPT for those improvements, or portions thereof that are financed by permittee funds, or Range Improvement Advisory Councils funds which were approved prior to 10/31/94.
14. Range improvements shall be designed, constructed, and maintained under NPS standards and stipulations adapted from the standards currently used by the Bureau of Land Management. In the

event the permit is transferred, all range improvements necessary to maintain the permit will be transferred from the permittee to the qualified applicant (See Term and Condition #8). Range improvements cannot be removed from National Park System lands without authorization. The Authorized Officer may require the permittee to remove range improvements that conflict with the goals and objectives of the Allotment Management Plan, NPS legislative guidelines, regulations or policies or the biological opinions of the Fish and Wildlife Service.

15. In the event that the NPS determines that a range improvement must be modified, relocated or removed in accordance with any of the other provisions of these terms and conditions, the permittee, at the discretion of the Superintendent, may receive reasonable compensation for the adjusted value of their interest in the range improvement, including interest in those improvements constructed prior to this permit. Or, in lieu of such compensation, the Superintendent may decide to authorize the permittee to remove the improvement and salvage all materials used as part of the improvement.
16. The permittee is responsible for control and management of his livestock while using the permit. The permittee shall comply with State requirements for branding livestock, breed, grade, and number of bulls, health, and sanitation. The Authorized Officer may require counting of animals to promote orderly grazing administration. The brand and other identifying marks found on the cattle are to be filed with the Authorized Officer prior to each grazing year. Where a permittee does not own the cattle which graze on the permit, the management lease (or pasturing agreement) that gives the permittee control must be immediately filed with the Authorized Officer.
17. Permit fees may be refunded if the permittee files for a refund prior to the period of adjusted use. A service charge will be assessed for each transfer of grazing permit and additional billing except for those initiated by the NPS. A service charge shall reflect processing costs and shall be adjusted periodically as costs change.
18. Grazing use will be based on long-term sustainable forage yield and current forage conditions, and in accordance with current AMP, biological opinions and NPS resource management conditions, goals and objectives. A grazing year starts on March 1 and concludes on February 28 or 29 of each year.
19. Pursuant to longstanding National Park Service policy, all water diverted to, or used on, Federal lands within a National Park System unit by the United States or its permittees will be perfected in the name of the United States. This provision applies only to the use of water, rights to which are established after the passage of the California Desert Protection Act. Water rights established under California State law, prior to the passage of the California Desert Protection Act, by an existing or previous permittee and to which the current permittee holds title or ownership remains the property of the permittee. Water rights on private lands that were developed in the past, or that may be developed in the future, remain as private property rights.
20. The permittee shall not engage in any of the following issued, or as subsequently modified by the NPS:
 - a. Violating any term or condition of this permit, either as issued, or as subsequently modified by the NPS;
 - b. Transfer of this permit, in whole or in part, to any other person without NPS approval;

- c. Construction, replacement or alteration of a range improvement without NPS approval, or failure to remove a range improvement as directed;
 - d. Disturbing any ground on Federal land without first obtaining permission from the NPS, except for minor emergency repairs with the use of hand tools, except emergency maintenance is necessary, in which case the rancher will notify the NPS, in advance if possible or within three days;
 - e. Subleasing. Subleasing means that the permittee may not enter into an agreement, verbal or written, that allows someone other than the permittee to graze livestock on the Federal lands of the allotment, or that allows grazing on the Federal lands by livestock that are not owned or controlled by the permittee;
 - f. Grazing livestock without an NPS permit;
 - g. Grazing livestock in excess of numbers authorized by this permit;
 - h. Cutting, burning, spraying, destroying or removing vegetation without NPS approval;
 - i. Littering;
 - j. Knowingly or willfully making a false statement or representation in grazing applications, range improvement applications, cooperative agreements, actual use reports and/or amendments thereto;
 - k. Violating State livestock board requirements relating to branding of livestock, breed, grade, and number of bulls; and health and sanitation requirements;
 - l. Placement of supplemental feed as defined in 43 CFR 4100.0-5, without NPS approval; and
 - m. Violation of any Federal or State law relating to conservation and protection of natural or cultural resources or environmental quality.
21. This permit is subject to cancellation or suspension, in whole or in part, by the Authorized officer, for failure to pay fees, conduct in violation of any provision in Condition and Term #3, 13, 16 and 20, or where necessary to fulfill obligations imposed upon the NPS by law or regulation, or for reasons determined by the Director, National Park Service, with sixty (60) days notice.
22. The permittee may appeal a decision made under the terms and conditions of this permit to the Field Director, National Park Service, 600 Harrison Street, San Francisco, California 94017. Such an appeal must be filed in writing within thirty (30) calendar days of the date of notification to the permittee of the action or decision complained of. The terms and conditions of this permit remain in effect during this appeal process. The permittee may appeal a decision of the Field Director to the Director, National Park Service, Washington, D.C. within thirty (30) calendar days after receipt of notice of the Field Director's decision. The appeal to the Director will be the final administrative appeal under this permit.

WILDERNESS APPENDIX

Special terms and conditions apply only to those allotments that contain Federal lands that are designated as wilderness.

1. TRANSPORTATION:

- a. Each non-emergency entry by motorized vehicle or mechanized transport into wilderness must be approved by the Authorized Officer.
- b. The Authorized Officer may pre-approve a list of scheduled motorized vehicle or mechanized transport entries into wilderness. (Pre-approved wilderness access, if any, is attached as the last page(s)).
- c. Motorized vehicle or mechanized transport use in wilderness will normally only be permitted to those portions of the wilderness where they had occurred prior to the area's designation as wilderness.
- d. Each emergency motor vehicle or - mechanized transport entry must be reported to the Authorized Officer beforehand, if possible, or by close of business on the next working day. Phone notification is sufficient.
- e. An "emergency" for purpose of entry exists where there is imminent danger of loss of livestock, severe facility damage, an injured person requiring transport, or a life threatening situation.
- f. Mechanized transport includes, but is not limited to, any wheeled vehicle.
- g. Entry by foot or by animal needs no prior approval, unless required by regulations (for example, commercial activities or organized groups).

2. MOTORIZED EQUIPMENT:

- a. Use of motorized equipment in wilderness (e.g. chain saws, augers, battery operated equipment, etc.) must be approved by the Authorized Officer.
- b. The Authorized Officer may pre-approve a list of scheduled motorized equipment use in wilderness. (Preapproved wilderness equipment use, if any, is attached as the last page(s)).
- c. Motorized equipment use in wilderness will normally only be permitted in those portions of the wilderness where they had occurred prior to the area's designation as wilderness.

3. NEW STRUCTURES AND INSTALLATIONS Construction of new range facilities (e.g. wells, pipelines troughs, windmills, fences, cabins) in wilderness may be permitted only where the Authorized officer determines that the facility serves the purpose of natural and/or cultural resource protection.

4. REPLACEMENT OF EXISTING STRUCTURES AND INSTALLATIONS

- a. The Authorized Officer may approve the replacement of existing range facilities in wilderness.
- b. Such replacement generally should be of kind.
- c. Replacement of existing facilities "in kind."
- d. Replacement of existing facilities in wilderness, where they are visible (i.e. above ground) shall be with natural materials, if the use of natural materials does not impose "unreasonable additional costs" on the permittee.

5. MAINTENANCE OF STRUCTURES AND INSTALLATIONS

Maintenance of existing operational facilities requires approval of the Authorized Officer only if use of motorized vehicle, mechanized transport or motorized equipment is necessary.

6. ABANDONMENT OF FACILITIES

The permittee will remove all facilities located in wilderness that the permittee either constructed, or made use of, but which are now abandoned.